

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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SUMMARY

TracFone Wireless has requested that the Commission clarify that mobile broadband Lifeline service provided through use of a 3G feature phone (a device intended for voice telephony and text messaging, but not for Broadband Internet Access Service) does not meet the minimum standard for mobile BIAS. It further requested clarification that the 500 MB of mobile broadband data requirement means that the provider provides actual mobile broadband data, and that it not rely on “premium” Wi-Fi available only at designated Wi-Fi hotspots to meet 98% of the 500 MB requirement. Further, it has requested clarification that providers of such services which do not meet the minimum standard for mobile broadband are not entitled to “freeze” their Lifeline accounts for 12 months, thereby depriving Lifeline households of the ability to obtain meaningful broadband Lifeline service from providers whose services do meet the minimum standards.

Another major Lifeline provider, leading consumer groups, and a state regulatory commission share TracFone’s concern about abuses of the minimum service standards and the abuse of the port freeze rule. The only commenter who has had the audacity to assert that feature phones are suitable BIAS devices and that Wi-Fi may be relied on to meet the minimum standard and lock up Lifeline customers for a year is Telrite – a company which brazenly has engaged in such tactics. The best way to determine whether a feature phone is a suitable BIAS device is to attempt to perform tasks on the Internet using such a device. Doing so is impracticable, and often impossible. Furthermore, under applicable Commission standards, Wi-Fi is a fixed broadband service, not a mobile broadband service, and therefore does not meet the Commission’s minimum standard for mobile broadband Lifeline service.

TracFone asks the Commission to require that any Lifeline provider which has improperly frozen Lifeline customer accounts for 12 months be required to immediately notify customers of the error and remove the freeze. Such accounts should be subject to the 60 day port freeze rule retroactive to the date of the initial account freeze.

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¹ Public Notice – Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification, DA 17-1174, released February 16, 2017.

investments by Lifeline providers to provide meaningful and usable BIAS to low income households and to afford Lifeline customers a fair opportunity to select the broadband services which best meet their needs.

If Telrite's versions of BIAS were to be accepted by the Commission as meeting the minimum standards for BIAS, thousands, perhaps millions, of Lifeline households would be unable to utilize BIAS for its intended purposes, including, *e.g.*, to obtain information, to do homework and other research, to access government and health care resources, to download video content, to utilize important applications, etc. If the goal of the Lifeline program is to lock in Lifeline customers with largely unusable mobile broadband services, then there is no reason why Lifeline providers should not be allowed to get away with claiming that 3G feature phones are suitable Internet access devices and that the 500 MB minimum standard can be met using Wi-Fi locations provided by others and available only where those others have elected to locate Wi-Fi hotspots (which are often not located where Lifeline consumers need to utilize BIAS). If, however, the goal of the Lifeline program is to bridge the digital divide by bringing the benefits of BIAS to all households, including low-income households, then the Commission should clarify that such reliance on Wi-Fi and feature phones meets neither the letter nor the intent of the Commission's minimum standards and that providers of such services may not lock up their customers for a year.

I. Among All Commenters, Only Telrite Believes that Telrite's Version of BIAS Meets the Minimum Standards and Is Sufficient for 12 Month Port Freezes.

Four parties submitted comments on TracFone's clarification request – Sprint Corporation (the second largest provider of Lifeline service in the United States); Consumer Action and the National Consumers League (whose joint comments articulate consumer interests, including those of low-income Lifeline consumers); the Public Utility Division of the

Oklahoma Corporation Commission (a state regulatory commission with authority to designate Lifeline providers pursuant to Section 214(e)(2) of the Communications Act); and Telrite Corporation d/b/a Life Wireless (a company whose “lock up its customer base” tactics caused TracFone to request clarification). Not surprisingly, only Telrite had the temerity to assert that 3G feature phones and reliance on Wi-Fi (available only at hotspots chosen by someone else) are sufficient to meet the Commission’s mobile BIAS minimum standard, and allow it to invoke the 12 month port freeze rule for mobile BIAS. Consumer Action and the National Consumers League state their concern simply and concisely, asking that the Commission “stop the abuse of the so-called ‘port freeze’ rule, which is now being used to limit consumer choice and access to true broadband service and broadband-suitable devices.”² Sprint – a Lifeline provider which, like TracFone, has invested extensively to provide Lifeline customers with real mobile BIAS and with devices suitable to use BIAS, agrees. Sprint states that “Wi-Fi of any sort does not satisfy the basic goal of providing BIAS in locations, such as a Lifeline customer’s home, that otherwise lacks broadband access” and therefore cannot count towards meeting the minimum data requirements of Section 54.408(b)(2) of the Commission’s rules.³ The Oklahoma Corporation Commission’s Public Utility Division shares similar concerns, noting that “Wi-Fi-delivered BIAS would necessarily be excluded from the data upon which minimum service standards are to be established.”⁴ Only Telrite (whose conduct led to TracFone’s clarification request and a similar request from Sprint) has claimed that the Commission’s goals of the Lifeline

² Consumer Action and National Consumer League Comments at 1.

³ Sprint Comments, at 1-2. Telrite’s assertion at page 2 n.6 of its comments that providers of broadband Lifeline services need not provide service in Lifeline consumers’ homes is astounding. Lifeline is a program which was created for the explicit purpose of connecting low-income households. In modernizing the Lifeline program to support broadband, the Commission never indicated that Lifeline services no longer need to be available for use at enrolled Lifeline customers’ residences.

⁴ Comments of the Public Utility Division of the Oklahoma Corporation Commission, at 4.

Modernization Order⁵ can be met with BIAS offerings based on 3G feature phones and reliance on Wi-Fi.

II. Accessing the Internet with a 3G Feature Phone Does Not Provide Meaningful BIAS.

No one other than Telrite ever has claimed that a 3G feature phone (a simple cellphone intended to be used for voice calls and text messages) is a suitable device to access BIAS services. Telrite has spent pages arguing why such devices, which were provided to voice-only Lifeline consumers before the Lifeline program was modernized to include broadband, are appropriate Internet access devices. There is a simple way to determine whether a BIAS service which is provided with a 3G feature phone meets the BIAS minimum standard. Before concluding that a feature phone is a suitable Internet access device, one should attempt to do a typical eighth grade student's homework assignment on such a device, or attempt to fill out an online employment application, or attempt to enroll in a healthcare plan through the healthcare.gov website, using such a device. Anyone who has ever attempted to perform any of these tasks using a feature phone realizes that it cannot practicably be done. In addition to a small, virtually unusable screen size,⁶ feature phones lack capacity to retrieve and store data or to view video content. They are incapable of downloading apps. Can a student using a feature phone download and use the Google app? — The Encyclopedia Britannica app? — Dr. Seuss's Read and Learn app? The answer to each is no. Neither can a feature phone utilize the millions of other apps and websites which exist for educational purposes, healthcare purposes, or government assistance purposes. One can argue about whether a 3G feature phone with a SIM card provided years back to a voice-only Lifeline customer can now be used effectively as an

⁵ Lifeline and Link Up Reform and Modernization, et al. (Third Report and Order, Further Report and Order, and Order on Reconsideration), 31 FCC Rcd 3962 (2016).

⁶ Consumer Action and National Consumer League Comments, at 2.

Internet access device. However, all that is needed to verify the validity *vel non* of that hypothesis is to attempt to utilize a 3G feature phone (provided to Lifeline customers by Telrite or any other provider) to access the Internet for any educational, healthcare-related, government service-related, or employment-related purpose.

To meet the minimum standard and to fulfill the Commission's stated intent in establishing that standard, it is not sufficient that a Lifeline customer be provided with a device which technically can be used (albeit inefficiently and with great difficulty) to gain minimal access to some Internet content. Neither is it sufficient to nominally provide a Lifeline consumer with 500 MB of broadband data (as Telrite appears to provide to its feature phone customers) if the data are provided for use with such a feature phone. If the Internet access device is not suitable to access and interact with Internet content and apps, and to perform functions using the Internet, then it makes no difference whether the Lifeline customer is nominally provided with 500 MB, 5,000 MB, or 5,000,000 MB. As noted by the Commission in the Lifeline Modernization Order, such access must be meaningful ("[t]o fully obtain the benefits of a modernized Lifeline program, the Commission and others must encourage and facilitate **meaningful access** and adoption to quality advanced telecommunications services among low-income households.").⁷ A 3G feature phone may enable a Lifeline customer to enjoy some limited access to certain websites, and may even allow for sending and receipt of emails. However, such devices do not provide **meaningful** access to advanced telecommunications services in general and BIAS in particular. As such, they are far below the Commission's stated expectations for Internet access devices.

⁷ Lifeline Modernization Order, ¶ 366 (emphasis added).

3G feature phones were never intended to be BIAS devices. Such devices have been provided by Lifeline ETCs (including TracFone, Sprint, Telrite and others) to be used in connection with Lifeline-supported voice telephony service. As noted by the Commission, device costs associated with standalone voice telephony service are generally lower than device costs for BIAS offerings. For that reason, the Commission's permitted 60 day port freeze for such offerings using such devices is appropriate and sufficient.⁸

III. Wi-Fi ("Premium" or Otherwise) Is Not Mobile BIAS.

As troubling as Telrite's self-serving claim that a 3G feature phone is a suitable BIAS device is its companion claim that it need only provide its Lifeline customers with 10 MB of monthly mobile broadband data (2 percent of the 500 MB mandated by Section 54.408(b)(2) of the Commission's rules), and that it may rely on someone else's Wi-Fi (available only at a Wi-Fi provider's hotspots) to meet the remaining 98 percent of the minimum service standard for mobile broadband data usage. Telrite only provides its Lifeline customers with 10 MB of mobile broadband data. It also allows its Lifeline customers to access iPass's "premium" Wi-Fi, wherever iPass makes such Wi-Fi access available. However, providing Lifeline customers with access to Wi-Fi does not provide customers with mobile BIAS as defined by the Commission's rules.

BIAS provides customers with "the capability to transmit data to and receive data from all or substantially all Internet endpoints."⁹ Mobile broadband Internet access service is a "broadband Internet access service that serves end users primarily using mobile stations."¹⁰ The Communications Act defines a mobile station as "a radio-communication station capable of

⁸ Id. ¶ 392.

⁹ 47 C.F.R. § 8.2(a).

¹⁰ 47 C.F.R. § 8.2(e).

being moved and which ordinarily does move.”¹¹ Thus, to qualify as mobile BIAS, a service must enable a customer to seamlessly and continuously have access to the Internet at all location points, whether the customer’s device remains in one location or is traveling at the time the customer is accessing the Internet. Indeed, the definition of mobile BIAS assumes that the device will be moving while being used.

A review of how Wi-Fi, and iPass’s Wi-Fi service in particular, works demonstrates that Telrite’s service does not meet the Commission’s definition of mobile BIAS. Most of iPass’s “premium” Wi-Fi hotspots are at airports, hotels, convention centers, restaurants, tourist areas, etc.¹² Few are located in low-income residential areas and are unlikely to be of use to Lifeline customers (except, perhaps for those children in Lifeline households who do their homework at airports, hotels, and convention centers, or on international flights). TracFone did a sample test using one ZIP Code in Florida where there are a large number of enrolled Lifeline customers, *i.e.*, 33311. Within ZIP Code 33311, iPass has 12 hotspots, nine of which are located inside business locations (typically, restaurants and hotels, and only available to patrons of those businesses). Less than one percent of the 10,223 Lifeline households within that ZIP Code reside within areas covered by iPass hotspots. In short, Telrite’s provision of iPass’s “premium” Wi-Fi is not available to most Lifeline customers. Moreover, even if a Lifeline consumer can access one of the iPass hotspots, there are no assurances that a consumer’s mobile device will remain connected to the Internet as the consumer moves out of the coverage area of a hotspot. As such, having access to the Wi-Fi service offered by Telrite does not provide Lifeline consumers with the capability to access the Internet on their mobile devices – devices that are

¹¹ 47 U.S.C. § 153(34).

¹² According to the iPass website (<https://www.ipass.com>), iPass hotspots are available at over 85,000 hotel and convention center venues, at over 94% of the world’s top 100 airports, and on over 2,700 planes). These locations are likely to be of little use to most Lifeline customers.

statutorily defined as being capable of moving and that ordinarily do move. Providing access to the Internet at discrete fixed locations, without providing any seamless and consistent service in areas between those locations is not mobile BIAS as defined by the Commission's rules.

There is also a fundamental flaw in Telrite's premise that the 500 MB mobile broadband data standard can be met by Wi-Fi. It disregards the Commission's intended purpose in adopting TracFone's proposal that Lifeline providers make available for use with Lifeline-supported services Wi-Fi-enabled devices with hotspot capability. In articulating that requirement, the Commission stated as follows: "... these requirements are only conditions for receiving support *if* the Lifeline provider chooses to provide devices for the purpose of **extending the connectivity supported by Lifeline**."¹³ The Commission's highlighted words are critical to understanding the Commission's intended role of Wi-Fi within the Lifeline program. Wi-Fi's purpose is to **extend** the Internet connectivity made available by Lifeline providers. Contrary to Telrite's unsupported and unsupportable proposition, Wi-Fi is not to be the means by which Lifeline providers provide mobile BIAS.

The conclusion that Wi-Fi, including "premium" Wi-Fi, does not meet the Commission's minimum standard for broadband Lifeline service does not depend on whether the Wi-Fi service is paid for by the Lifeline provider (*i.e.*, resold service). The Commission has long held that Lifeline service may be provided on a resale basis.¹⁴ The reason why Wi-Fi does not meet the minimum service standard for mobile broadband Lifeline service is that Wi-Fi itself is not a mobile broadband service. In the Lifeline Modernization Order, the Commission expressly

¹³ Lifeline Modernization Order, ¶ 374 n.928 (emphasis added). See also ¶ 376 (where the Commission describes Wi-Fi-enabled devices as a "complement to a consumer's primary broadband service.").

¹⁴ See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005).

stated that to claim support for mobile broadband Lifeline service, the broadband provided must be mobile broadband.¹⁵

There are important differences between fixed broadband, including Wi-Fi, on the one hand, and mobile broadband, on the other hand. Those critical differences have long been noted by the Commission. For example, in the 2016 Broadband Progress Report,¹⁶ the Commission stated that “Wi-Fi routers allow a fixed connection to be easily shared by a variety of devices at the same time, however, coverage is generally limited to nearby devices.”¹⁷ Given the limited geographic range of Wi-Fi routers, Wi-Fi does not function in a manner which provides customers with seamless mobile broadband connectivity and therefore does not and should not qualify as a mobile broadband service. Indeed, in that same report, the Commission concluded that fixed broadband (such as iPass’s Wi-Fi) and mobile broadband (such as that provided by TracFone and other Lifeline providers) serve different needs and are not adequate substitutes for one another.¹⁸

There is another reason why the premise that a Lifeline provider may meet the BIAS minimum standard through provision of Wi-Fi (where available) should be rejected. If a provider is able to rely upon Wi-Fi where available, to meet the minimum standard, then there would be no reason to have a BIAS minimum service standard. This point was addressed in Sprint’s comments. “If Wi-Fi access is allowed to count towards the minimum BIAS data

¹⁵ Lifeline Modernization Order, ¶ 96 (“... to claim Lifeline support for a mobile broadband service, a provider must provide to the Lifeline subscriber a service advertising at least 3G **mobile technology** for at least the amount of data usage allowance specified by the minimum service standards.” (emphasis added)). The Commission has recognized elsewhere that Wi-Fi is not a mobile broadband service. See, e.g., Protecting and Promoting the Open Internet, 30 FCC Rcd 5601, ¶ 216 (2015).

¹⁶ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 31 FCC Rcd 699 (2016).

¹⁷ Id. ¶ 28.

¹⁸ Id. ¶ 31.

allotment, there would be no need to mandate increases over time – a service provider that makes a Wi-Fi-enabled device available to its Lifeline broadband customers would be able to satisfy the future data allotment requirements immediately via Wi-Fi.”¹⁹ Sprint is correct. A minimum mobile BIAS standard becomes meaningless if any provider can rely on Wi-Fi (where available) to meet the standard.

In the Lifeline Modernization Order, the Commission promulgated rules increasing over several years the quantity of mobile broadband data which must be provided.²⁰ Several parties, including TracFone, have concluded that those future year minimum standards would drive up the cost of providing mobile BIAS to Lifeline consumers, would render even subsidized service unaffordable to low-income households, and should be reconsidered and revised.²¹ A group calling itself the Joint Lifeline ETC Petitioners also asked the Commission to reconsider the mobile broadband minimum service standard.²² Telrite is a member of that group and a signatory to that reconsideration petition. Thus, Telrite is on record as asserting that the mobile broadband minimum service standards are excessive and should be reconsidered. One must question why Telrite would seek reconsideration of a mobile BIAS minimum standard which it considers to be burdensome and which would render Lifeline unaffordable if it had any valid reason to believe that the standard can be met by providing to Lifeline customers — where available — access to another’s Wi-Fi hotspots. For all of these reasons, Wi-Fi, whether labeled “premium” or otherwise, whether paid for by a reseller or provided free by a coffee shop, is not

¹⁹ Sprint Comments, at 2.

²⁰ 47 C.F.R. § 54.408(b)(2).

²¹ Petition for Reconsideration of TracFone Wireless, Inc., WC Docket Nos. 11-42, 09-197 and 10-90, filed June 23, 2016, at 12-18.

²² Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, filed June 23, 2016, at 3-9.

mobile BIAS service and its location-specific availability may not be relied on to meet the Commission's minimum service standards for mobile broadband Lifeline service.

IV. BIAS Accessed with 3G Feature Phones and Provided Through Wi-Fi Does Not Meet the Commission's Mobile BIAS Minimum Standard and Is Not Subject to the 12 Month Port Freeze Rule. A Suitable Remedy Should Be Imposed.

As described in these reply comments, there is broad consensus among all commenting parties (except for Telrite) that, in modernizing the Lifeline program to support BIAS and in establishing minimum service standards, the Commission never intended for ETCs to provide broadband Lifeline service accessed through 3G feature phones and relying on other providers' Wi-Fi hotspots, and claim that such services meet the mobile BIAS minimum service standard, and allowing such providers to lock up entire customer bases for a year. The most unfortunate consequence of Telrite's behavior is that, unless prohibited, it prevents low-income Lifeline households from availing themselves of meaningful BIAS for a full year, even when such services are available from other providers. Providers like TracFone, Sprint and others have invested heavily (as the Commission has encouraged them to do) to make available to Lifeline-eligible consumers 500 MB of mobile broadband access and Wi-Fi-enabled devices which can access hotspots where Wi-Fi is available to extend Internet connectivity. If a consumer enrolled in Telrite's Lifeline program on December 2, 2016 who is being provided with 10 MB of broadband data and Wi-Fi access or is being provided with mobile broadband data to be accessed using a 3G feature phone device wishes to obtain meaningful BIAS from another Lifeline provider, it will be unable to do until December 3, 2017.²³ Locking in such customers and denying them the ability to enroll in otherwise available broadband Lifeline programs

²³ See TracFone ex parte letter filed January 18, 2017.

undermines the purpose and goals of the Lifeline Modernization Order and violates the letter and the intent of the rules promulgated in that order.

In the Lifeline Modernization Order, the Commission listed three specific reasons for allowing a 12 month port freeze for BIAS: 1) to facilitate market entry for Lifeline-supported BIAS offerings; 2) to provide additional consumer benefits; and 3) to encourage competition.²⁴ Allowing Telrite or any other Lifeline provider to “game the system,” by locking up for 12 months Lifeline customers provided with 3G feature phones and customers to whom it has only provided 10 MB of mobile broadband service undermines each of those three reasons. It would deter market entry by precluding potential new entrants from competing for such locked up customers; it would provide no consumer benefits and would, in fact, deprive Lifeline consumers of the benefits of BIAS contemplated by the Commission; and it would discourage competition by reducing the addressable market available to competitors, including those competitors who are committed to providing their Lifeline customers with meaningful mobile broadband Internet access. Providing mobile BIAS service using feature phones and relying on where available Wi-Fi should be seen for what it is – at most, a second class service which will do nothing to bridge the digital divide which has long persisted between those who have meaningful Broadband Internet Access and those who do not.²⁵

In order to rectify this unfortunate and unintended situation, the Commission should immediately mandate and implement an appropriate remedy. Sprint has suggested that any Lifeline provider which has incorrectly misclassified a Lifeline customer as a BIAS customer in violation of the Lifeline Modernization Order and the rules promulgated in that order be required

²⁴ Lifeline Modernization Order, ¶ 389.

²⁵ Id., Statement of Commissioner Mignon L. Clyburn where she applauds the Commission for establishing minimum standards that “would prevent second-class or inferior service.”

to notify all such affected subscribers of the error and immediately remove the 12 month port freeze from those accounts.²⁶ TracFone concurs with Sprint's proposal with one additional provision. Any Lifeline customer whose account was improperly frozen for 12 months must have its account made subject to the 60 day port freeze rule for voice Lifeline retroactive to the date of the initial improper 12 month freeze. For example, if a provider froze a customer's account for 12 months commencing on December 2, 2016 that was not properly subject to the 12 month freeze rule for broadband Lifeline service, the account should be frozen for not more than 60 days commencing December 2, 2016.

Improper freezing of Lifeline customers is a serious violation of the Lifeline rules. It deprives consumers of service choices to which they are entitled to under the Commission's rules, deprives Lifeline consumers of meaningful BIAS, deprives competitors of the opportunity to compete for customers by providing services which are beneficial to consumers and provide meaningful broadband service, and undermines the credibility of the entire Lifeline program. Such violations following clarification by the Commission should be referred to the Enforcement Bureau for investigation and, where appropriate, enforcement action.

Respectfully submitted,

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²⁶ Sprint Comments, at 3.